

DEC 03 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

FRANK D'ANGELO,

Petitioner - Appellant,

v.

JOHN RATELLE, Warden,

Respondent - Appellee.

No. 00-56852

D.C. No. CV-99-01269-NAJ

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Argued and Submitted November 5, 2003
Pasadena, California

Before: HALL, O'SCANNLAIN, and McKEOWN, Circuit Judges.

D'Angelo appeals the district court's denial of his § 2254 habeas petition
challenging his conviction for five counts of burglary of residential property.

D'Angelo argues that he had a right to counsel at the parole revocation hearing

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

where Cann and Adler first identified him. D'Angelo failed to raise this claim before the state court or the district court. Therefore, the issue is not properly before us and we decline to address it. See Willard v. California, 812 F.2d 461, 465 (9th Cir. 1987) (refusing to entertain a claim of ineffective assistance of counsel which was not included in the petition to the district court).

With respect to D'Angelo's remaining arguments regarding ineffective assistance of counsel, we affirm for the reasons carefully detailed in the magistrate judge's opinion.

AFFIRMED.